TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1899.

No. 148.

J. M. MOORE, PLAINTIFF IN ERROR,

vs.

D. B. STONE, AMMVILLIS ALLEN, ALMA MAY STONE, ET AL.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WASHINGTON.

FILED MAY 4, 1899.

(17,394.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., DECEMBER 1, 1899.

1 In the Superior Court of the State of Washington for Garfield County.

J. M. MOORE, Plaintiff, *vs.* D. B. STONE, AMMVILLIS ALLEN, ALMA May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants.	No. 3124. Amended Complaint.

Plaintiff herein, for amended complaint and cause of action, alleges:

I.

That at all the times hereinafter mentioned the Northern Pacific Railroad Company was a corporation created, organized, and existing under and by virtue of an act of Congress approved July 2, 1864, entitled "An act granting lands to aid in the construction of a railroad and telegraph line from Lake Superior to Puget sound, on the Pacific coast, by the northern route," and the acts and joint resolutions of Congress supplemental thereto and amendatory thereof.

That by the terms and provisions of said act said corporation was authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, beginning at a point on Lake Superior in the State of Minnesota or Wisconsin, thence westerly by the most eligible railroad route, as should be determined by said company, within the territory of the United States, on a line north of the forty-fifth degree of latitude to some point on Puget sound, with a branch line via the Columbia river to a point at or near Portland, in the State of Oregon.

2 II.

That the third section of said act of Congress is in words and figures as follows, to wit:

"And be it further enacted, That there be, and hereby is, granted to the 'Northern Pacific Railroad Company,' its successors and assigns, for the purpose of aiding in the construction of said railroad and telegraph line to the Pacific coast, and to secure the speedy and safe transportation of the mails, troops, munitions of war, and public stores, over the route of said line of railway, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad whenever it passes through any State, and whenever on the line thereof, the

United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption, or other claims or rights, at the time the line of said road is definitely fixed, and a plat thereof filed in the office of the Commissioner of the General Land Office; and whenever, prior to said time, any of said sections or parts of sections shall have been granted, sold, reserved, occupied by homestead settlers, or pre-empted, or otherwise disposed of, other lands shall be selected by said company in lieu thereof, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections: Provided, that if said route shall be found upon the line of any other railroad route to aid in the construction of which lands have been heretofore granted by the United States, as far as the routes are upon the same general line, the amount of land heretofore granted shall be deducted from the amount granted by this act: Provided, further, that the railroad company receiving the previous grant of land may assign
3 their interest to said 'Northern Pacific Railroad Company,' or may consolidate, confederate, and associate with said company upon the terms named in the first section of this act: Provided, further, that all mineral lands be, and the same are hereby excluded from the operations of this act, and in lieu thereof a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections, nearest to the line of said road may be selected as above provided: And provided, further, that the word 'mineral,' when it occurs in this act, shall not be held to include iron or coal: And provided, further, that no money shall be drawn from the Treasury of the United States to aid in the construction of the said 'Northern Pacific railroad.'"

III.

That the fourth section of said act of Congress was and is in words and figures as follows, to wit:

"And be it further enacted, That whenever said 'Northern Pacific Railroad Company' shall have twenty-five consecutive miles of any portion of said railroad and telegraph line ready for the service contemplated, the President of the United States shall appoint three commissioners to examine the same, and if it shall appear that twenty-five consecutive miles of said road and telegraph line have been completed in a good, substantial and workmanlike manner, as in all other respects required by this act, the commissioners shall so report to the President of the United States, and patents of lands, as aforesaid, shall be issued to said company, confirming to said company the right and title to said lands, situated opposite to, and coterminous with, said completed section of said road; and, from time to time, whenever twenty-five additional consecutive miles shall have been constructed, completed, and in readiness as aforesaid, and verified by said commissioners to the President of the United States, then patents shall be issued to said company conveying the additional sections of land as afore-
4 said, and so on as fast as every twenty-five miles of said road is completed as aforesaid: Provided, that not more than ten

sections of land per mile, as said road shall be completed, shall be conveyed to said company for all that part of said railroad lying east of the western boundary of the State of Minnesota, until the whole of said railroad, from the place of beginning on Lake Superior to the western boundary of Minnesota: Provided, also, that lands shall not be granted under the provisions of this act on account of any railroad, or part thereof, constructed at the date of the passage of this act."

IV.

That the sixth section of said act of Congress was and is in words and figures as follows, to wit:

"And be it further enacted, That the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad; and the odd sections of land hereby granted shall not be liable to sale, or entry, or pre-emption before or after they are surveyed, except by said company, as provided in this act; but the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'An act to secure homesteads to actual settlers on the public domain,' approved May twenty, eighteen hundred and sixty-two, shall be, and the same are hereby, extended to all other lands on the line of said road, when surveyed, excepting those hereby granted to said company. And the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre, when offered for sale."

V.

That the twelfth section of said act of Congress was and is in words and figures as follows:

"And be it further enacted, That the acceptance of the terms, conditions and impositions of this act by the said Northern Pacific Railroad Company shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within two years after the passage of this act, and not afterwards, and shall be served on the President of the United States."

VI.

That said railroad company accepted the terms, conditions, and impositions of said act of Congress in writing, under its corporate seal, pursuant to the direction of its board of directors first had and obtained, and on the 29th day of December, A. D. 1864, served such acceptance on the President of the United States.

VII.

That by joint resolution of Congress approved May 31, 1870, entitled "A resolution authorizing the Northern Pacific Railroad

Company to issue its bonds for the construction of its road and to secure the same by mortgage and for other purposes," it was resolved and provided in words and figures as follows, to wit:

"Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bonds to aid in the construction and equipment of its road, and to secure the same by mortgage on its property and rights of property of all kinds and descriptions, real, personal, and mixed, including its franchise as a corporation, and, as proof and notice of its legal execution and effectual delivery, said mortgage shall be filed and recorded in the office of the Secretary of the Interior; and also to
6 locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main line to some point on Puget sound, via the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade mountains to Puget sound, and in the event of there not being in any State or Territory in which said main line or branch may be located at the time of the final location thereof the amount of lands per mile granted by Congress to said company within the limits prescribed by its charter, then said company shall be entitled, under the direction of the Secretary of the Interior, to receive so many sections of land belonging to the United States and designated by odd numbers in such State or Territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty-four, and that twenty-five miles of said main line between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the first day of January, anno Domini eighteen hundred and seventy-two, and forty miles of the remaining portion thereof each year thereafter until the whole shall be completed between said points: Provided, that all lands hereby granted to said company which shall not be sold or disposed of or remain subject to the mortgage by this act authorized at the expiration of five years after the completion of the entire road shall be subject to settlement and pre-emption like other lands at a price to be paid to said company not exceeding two dollars and fifty cents per acre; and if the
7 mortgage hereby authorized shall at any time be enforced by foreclosure or other legal proceedings or the mortgaged lands hereby granted or any of them be sold by the trustees to whom such mortgage may be executed, either at its maturity or for any failure or default of said company under the terms thereof, such lands shall be sold at public sale, at places within the States and Territories in which they shall be situate, after not less than sixty days' previous notice, in single sections or subdivisions thereof, to the

highest and best bidder: Provided further, that in the construction of the said railroad American iron or steel only shall be used, the same to be manufactured from American ores exclusively."

VIII.

That said railroad company, *in* the 21st day of February, 1872, filed in the office of the said Commissioner of the General Land Office of the United States a certain map or plat showing the general route of its main line of railroad from a point on Lake Superior, Wisconsin, westerly to and through the then Territory (now State) of Washington to Wallula.

That upon the filing of said map or plat on said 21st day of February, 1872, showing the general route of the main line of said railroad from Spokane to Wallula, in said Territory (now State) of Washington, the said Commissioner of the General Land Office, under and in pursuance of the directions of the Secretary of the Interior, marked and designated upon the maps and records of his office the limits of the lands granted by Congress to said railroad company to aid in the construction of said railroad opposite to and coterminous with said line of railroad, as shown on said plat, to wit, forty-miles limit on each side of said line of the general route of the main line of said railroad.

That thereafter said Commissioner of the General Land
8 Office, acting under the direction and in pursuance of the instructions of the Secretary of the Interior, transmitted to the United States district land officers for the district within which said premises were and are situate a diagram of that portion of said general route of the main line of said railroad with the said forty-miles limit indicated thereon, and that said Commissioner of the General Land Office, so acting under the direction and in pursuance of the instructions of the Secretary of the Interior, ordered and directed that the lands within said limits be, and the same were thereby, withdrawn and held reserved from sale or homestead or other entry, and directed the United States district land officers of said land district to withdraw and hold reserved all of said lands within said described limits from sale, pre-emption, or homestead entry, which said letter of instructions to said district land officers and said diagram and plat were received and filed in said district land office on the 22nd day of April, 1872; that the N. E. ¼, sec. 3, T. 13, R. 42 E., W. M., was within 40 miles of said general route.

IX.

That thereafter the said railroad company proceeded with the work of surveying, locating, and building the line of its said railroad, and on the 4th day of October, 1880, said railroad company definitely located and caused to be filed a plat or map of that portion of its main line of said railroad extending from the city of Spokane, in the county of Spokane, in the then Territory (now State) of Washington, to the said Wallula, in the then Territory (now State) of Washington, which said map or plat of definite location of said

railroad had theretofore been transmitted to the Secretary of the Interior, and upon the said 4th day of October, 1880, said map or plat of definite location was accepted by the said Secretary of the Interior and by him caused to be filed in the office of the
9 Commissioner of the General Land Office of the United States of America.

That upon the filing of said map or plat of definite location on the 4th day of October, 1880, of that portion of said railroad extending from Spokane to Wallula, in the then Territory (now State) of Washington, so approved and filed, as aforesaid, the said Commissioner of the General Land Office, acting under the instructions and directions of the Secretary of the Interior, marked and designated upon the maps and records in his office the limits of the lands granted by Congress to said railroad company to aid in the construction of said railroad, opposite to and coterminous with said line of railroad, as shown on said map or plat, forty and fifty mile limits on each side of said line of definite location.

That thereafter the said Commissioner of the General Land Office, under the directions of the Secretary of the Interior of the United States, transmitted to the United States district land officers for the district wherein the hereinafter-described premises were and are situate, to wit, at Walla Walla, Washington, a diagram showing that portion of said railroad so definitely fixed, as aforesaid, with the place and first indemnity limits indicated thereon, and the said Commissioner of the General Land Office, so acting under the instructions and directions of the Secretary of the Interior, withdrew and held reserved all of said lands within said described limits from sale or homestead or other entry, and directed the United States district land officers of said land office to withdraw and hold reserved all of said lands within said described limits from sale or entry, and said letter of instructions to said district land officers and diagrams were received and filed by them, the said district land officers, on the 30th day of November, 1880.

X.

That that certain tract or parcel of land situate, lying, and
10 being in Garfield county, State of Washington, and more particularly described as the northeast one-quarter of section three, in township thirteen north, range forty-two east, Willamette meridian, was and is opposite to and coterminous with said line of definite location so fixed on October 4, 1880, as aforesaid, and was and is more than forty miles, but less than fifty miles, distant from the said line of definite location of said railroad and within said first indemnity limits, and was at the date of said grant to said railroad company and on February 21st, 1872, and on April 22nd, 1872, and at the time when the line of said railroad through the Territory (now State) of Washington was definitely fixed and located and a plat thereof approved and filed in the office of the said Commissioner of the General Land Office in the manner and upon the date aforesaid, and on the 30th day of November, 1880, public land of the United States, to which the United States had full title,

not reserved, sold, granted, or otherwise appropriated and free from pre-emption or other claims or rights, and was and is non-mineral.

XI.

That upon the filing of said orders of withdrawal and the premises and by virtue thereof and the filing of each of them the said premises, to wit, the northeast quarter of section three, in township thirteen north, range forty-two east, Willamette meridian, in Garfield county, State (then Territory) of Washington, became and thereafter remained withdrawn from and not subject to sale or other entry under the laws of the United States.

XII.

That prior to the year 1885 said Northern Pacific Railroad Company definitely located the whole of the main and branch lines of its said railroad and caused maps or plats of said definite
11 location of the whole of its main and branch lines, approved by the Secretary of the Interior, to be filed in the office of the said Commissioner of the General Land Office.

That prior to 1888 said Northern Pacific Railroad Company constructed and completed its said railroad and telegraph line so definitely located, as aforesaid, upon the lines of such definite location, extending from Lake Superior to Puget sound (both main and branch lines), in all respects as a first-class railroad and telegraph line; that as fast as portions of said railroad and telegraph line equal to or exceeding twenty-five miles in length were so constructed, as aforesaid, they were examined by commissioners appointed by the President of the United States, and by said commissioners were found and reported to have been constructed in a good, substantial, and workmanlike manner, in all respects as required by said act of Congress; that such reports were accepted and approved by the President of the United States, as provided in said act of Congress approved July 2, 1864.

XIII.

That at the respective dates of the definite location of the various portions of the whole of the said main and branch lines of said railroad and within the primary limits of the grant to said railroad company there were ten million six hundred and twenty-four thousand seven hundred and forty-six and twenty-seven one-hundredths (10,624,746.27) acres of land which were lost from said grant by reason of the exceptions contained in said act of Congress of July 2, 1864; that at said respective dates of definite location there were within the indemnity limits prescribed in said act of Congress approved July 2, 1864, not more than seven million one hundred and seventy-seven thousand seven hundred and sixty nine and seventy-one one-hundredths (7,177,769.71) acres of land subject to selection under the terms of said act of Congress of July 2, 1864, as indemnity for lands excepted from said grant.

12 That of said ten million six hundred and twenty-four thousand seven hundred and forty-six and twenty-seven one-hundredths (10,624,746.27) acres of land so excepted from said grant, and for which said railroad company was entitled to receive lands in lieu thereof, not more than two million eight hundred and eighty-seven thousand and seventy-six and fifty-seven one-hundredths (2,887,076.57) acres were lost to and excepted from said grant subsequent to the passage and approval of said act of July 2, 1864, and said last-mentioned two million eight hundred and eighty-seven thousand and seventy-six and fifty-seven one-hundredths (2,887,076.57) acres of said total of ten million six hundred and twenty-four thousand seven hundred and forty-six and twenty-seven one-hundredths (10,624,746.27) acres, so lost, as aforesaid, was the only portion thereof which could or can be satisfied under the provisions of the said joint resolution of Congress approved May 31, 1870, and that the total area of lands in the indemnity limits of said grant to said company, subject to selection as indemnity at the respective dates of the definite location of the various portions of the line of said railroad, lacked more than five hundred and fifty thousand acres of being sufficient to satisfy the losses of said grant.

That plaintiff alleges that by virtue of the premises and upon the definite location of the line of said railroad the said Northern Pacific Railroad Company became the owner in fee-simple of the northeast quarter of section three, in township thirteen north of range forty-two east, Willamette meridian, in Garfield county, in the then Territory (now State) of Washington.

XIV.

That on the 12th day of December, 1883, the said Northern Pacific Railroad Company selected the northeast quarter of section 13 three, in township thirteen north of range forty-two east, Willamette meridian, in Garfield county, in the then Territory (now State) of Washington, under the direction of the Secretary of the Interior, under the provisions of the said acts of Congress, as indemnity and in lieu of other lands excepted from its grant; that, so acting under the direction and instructions of the Secretary of the Interior, and on the said 12th day of December, 1883, said railroad company filed in the United States district land office at Walla Walla, in the then Territory (now State) of Washington, which was the district in which said tract so selected was situate, its certain list No. 1, showing its said selection of said premises, and at the time of filing said list the said railroad company tendered and paid to said officers of said United States district land office all the fees required by law; that at the date of said selection said tract so selected was public land, to which the United States had full title, not reserved, sold, granted, or otherwise appropriated, except as herein set forth, and was free from pre-emption or other claim or any claim or rights or right, which list was accepted, allowed, and approved by said officers of the district land office at Walla Walla on January 5, 1884, and on said date trans-

mitted said list to the Commissioner of the General Land Office, at Washington, D. C., which was within a few days thereafter received by said Commissioner; that on Oct. 26, 1887, in compliance with and in pursuance of certain orders and directions subsequently made by the Secretary of the Interior, said railroad company did designate the losses for which the above mentioned and described premises were selected as indemnity; that by reason of the facts hereinbefore set forth the said Northern Pacific Railroad Company became the owner in fee and entitled to the immediate and exclusive possession of said lands and the whole and every part thereof, and was the owner of the complete equitable title therein and thereto.

14 XV.

That said railroad company selected the above mentioned and described premises in lieu of the following mentioned and described property, to wit:

Lot one was selected in lieu of lot 4, sec. 7, T. 19, R. 6, and lot two was selected in lieu of lot —, sec. 15, T. 20, R. 6, and S. W. ¼ of N. E. ¼ was selected in lieu of N. W. ¼ of N. W. ¼, sec. 15, T. 20, R. 6, and the S. E. ¼ of N. E. ¼ was selected in lieu of N. W. ¼ of N. E. ¼, sec. 21, T. 20, R. 6, which property in this paragraph described, in lieu of which the said N. E. ¼ of sec. 3, T. 13 N., R. 42 E., was selected, was excepted from said grant to said railroad company and had before the selection, as aforesaid, been patented to private entrymen; that said tract so designated as a loss and in lieu of which said selection was made is coterminous with and within forty miles of said line of definite location of the said Northern Pacific railroad in the then Territory (now State) of Washington, said tract so lost being the same quantity as that so selected.

XVI.

That on July 2nd, 1895, said Northern Pacific Railroad Company, for and in consideration of the sum of one hundred and thirty-five and sixty one-hundredths dollars ($135.60), sold and conveyed by general warranty deed the north half of section 3, in township 13 north of range 42 east of the Willamette meridian, in Garfield county, State of Washington, to the plaintiff herein, which said sum was so paid by the plaintiff to the said Northern Pacific Railroad Company in cash.

XVII.

That on the 30th day of June, 1884, defendant presented an application to make pre-emption declaratory statement for the above mentioned and described premises so selected, as aforesaid, to and in the district land office of the United States at
15 Walla Walla, Washington, alleging settlement upon land April 25th, 1882; which application was rejected, and on appeal to the Commissioner of the General Land Office a hearing in the matter was ordered to determine the condition of the said land at the date of the selection thereof, and to determine the status

of said lands and the rights of said defendant and the Northern Pacific Railroad Company therein and thereto; that such hearing was had before the officers of said United States district land office at Walla Walla, Washington, which officers held and decided that the said settlement and application to file the said pre-emption declaratory statement above mentioned excepted said lands from the said grant to the Northern Pacific Railroad Company, and for these reasons that the said lands were not subject to selection by said company, made by it, as aforesaid, and said register and receiver thereupon recommended that said selection be cancelled as to the property hereinbefore described, which decision was rendered on the — day of January, 1891, and thereafter an appeal was taken from the decision of the register and receiver of said land office to the Commissioner of the General Land Office, and thereafter, to wit, on or about the — day of April, 1896, the General Land Office decided adversely to said railroad company, and thereafter an appeal was taken to the Secretary of the Interior, and on May 20th, 1896, said Secretary of the Interior decided said matter adversely to the said railroad company; which said decisions of the Commissioner of the General Land Office and of the Secretary of the Interior are in words and figures as follows, to wit:

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
WASHINGTON, D. C., *April 30th*, 1895.

NORTHERN PC. R'Y CO.
v.
DIMON B. STONE.

16 Involving D. S. application for the N. E. ¼, sec. 3, t'p 13 N., R. 42 E.

Register and receiver, Walla Walla, Wash.

SIRS: I have considered the contest case of N. P. R. R. Co. *v.* Dimon B. Stone, involving N. E. ¼ 3, 13, 42, the records in which were transmitted by your letter of Feb. 11th, 1891, on appeal by said R. R. Co. from your decision in favor of Stone.

The land is within the limits of withdrawal upon the line of amended general route of said road, the map showing which was filed Feb. 21st, 1872, and upon the definite location of the road it fell within the indemnity limits, the order for withdrawal of which was received at the local office Nov. 30th, 1880.

These withdrawals have been held by the department to be without authority of law and of no effect (17 L. D., 8, and 19 L. D., 87).

On Jan. 5th, 1884, Dimon B. Stone presented an application to make pre-emption declaratory statement for this land, and alleged that he settled upon the land April 25th, 1882, and has resided thereon with his family ever since; that he fenced the whole place and put twenty acres in cultivation and built a house, and that his improvements are worth about $350.

On July 3rd, 1884, your office rejected said application for conflict with the claim of said R. R. Co., and upon appeal to this office a hearing in the matter was ordered by letter "F" of October 3rd, 1888, to determine the condition of the land at the date of Co.'s selection thereof.

Upon the issuance of notice to the parties a hearing was had and concluded in the case Jan. 5th, 1891, at which both parties were represented.

The testimony adduced at the hearing shows that Stone is a qualified settler, and established his actual residence with
17 his family on the land about the middle of April, 1882, in a cabin he had built upon the tract; that in the summer of 1882 he built a house 16 x 24 ft., one and a half stories high, dug a well, and cultivated a garden; that in 1883 he cropped 15 acres to grain, in 1884 and 1885 15 acres, and in 1886 and 1887 40 acres, in 1888 45 acres, in 1889 140 acres, and in 1890 155 acres; that he has fenced the whole place, and that his improvements are worth from $700 to $800.

You are of the opinion that Co.'s selection as to this land was improperly allowed, and that the Co. had no right to the tract prior to its selection, and that as the land was occupied and improved as the home of a qualified settler at the date of selection, that such selection as to the land in question should be canceled and Stone's application to make pre-emption should be overruled; your ruling is in accordance with the uniform practice of the department, and I concur in same.

Therefore your decision is sustained and the amendatory list No. 1 of selection of Jan. 5th, 1884, by said Co. is hereby held for cancellation as to the above-described tract of land. The usual time, sixty days after notice, will be allowed the company within which to appeal to the Hon. Sec'y of the Interior.

Should this decision become final Stone will be permitted to complete his entry and filing. You will advise him of this action.

At the proper time you will make due report as to action taken in the premises.

Mess. Britton & Gray, the resident att'ys for said Co., will be advised hereof by this office.

Very respectfully, S. W. LAMOREUX, *Comm.*

18 Vol. 22, 1,000.

DEPARTMENT OF THE INTERIOR,
WASHINGTON, D. C., *May* 20, 1896.

NORTHERN PACIFIC R. R. Co.
vs.
DIMON B. STONE.

Commissioner of the General Land Office.

SIR: The land involved in this case is the N. E. ¼ of sec. 3, tp. 13 N., R. 42 E., in the land district of Walla Walla, Washington,

and lies within the indemnity limits of the grant to the Northern Pacific Railroad Company. It was selected by the company on January 5, 1884, and on June 30, 1884, Dimon B. Stone offered a pre-emption filing for the same land, which, upon being rejected by the local officers for conflict with the company's grant, a hearing was ordered to determine the status of the land at the date of the selection.

The company has appealed from the decision of your office affirming that of the register & receiver, but the undisputed facts disclosed at the hearing and set out in the decision appealed from so fully support the conclusion therein reached that discussion is deemed unnecessary, and the same is affirmed.

The papers transmitted with your office letter "F" of August 26, 1895, are herewith returned.

Very respectfully, HOKE SMITH, *Secretary.*

19 XVIII.

That the said decisions of the register & receiver and of said Commissioner of the General Land Office and the Secretary of the Interior were made and rendered by them and each of them under misapprehension and mistake of law, and the said decisions and each of them are contrary to the law.

XIX.

That under the rules and practice of the Department of the Interior the said decision of the Secretary of the Interior finally closed and determined the said controversy as to the said tract of land in said department, and the parties thereto were notified thereof, and that said contest was closed on July 10, 1896.

That thereafter, to wit, on the — day of ——, 189–, the defendant made what purported to be final proof, and there was issued to him what purported to be final receipt of and for said land in said district land office, in which said receipt it was recited that said defendant was entitled to a patent for said land from the United States, and thereafter, to wit, on the — day of ——, 1897, a patent of the United States purporting to convey title to said premises, to wit, the northeast quarter of section three, in township thirteen north of range forty-two east, Willamette meridian, in Garfield county, Washington, in fee-simple to said defendant, was issued to him, the said defendant.

XX.

Plaintiff avers that by reason of the premises said United States district land officers, said Commissioner of the General Land Office, and said Secretary of the Interior were wholly without jurisdiction to consider the said application of said defendant to make pre-emption entry of said land, for the reason that said land was not

20 public land of the United States and was not subject to homestead entry, but at the time when said defendant made application to enter said land the same was withdrawn, and that said decisions allowing said defendant to make pre emption entry of said

land were void, and said entry of said defendant was and is void and of no effect.

XXI.

That by reason of the foregoing facts said railroad company became and was the owner in fee-simple of said premises hereinbefore first described and entitled to the legal title thereof and thereto and to the issuance of a patent therefor by the United States of America, which was wrongfully and unlawfully withheld, as aforesaid, and the said patent so issued to defendant, or, if not issued, which will hereafter be issued to him, constitutes the defendant a trustee, who holds the legal title for the benefit of the plaintiff herein, and casts a cloud upon the title of plaintiff herein, and the defendant wrongfully and unlawfully withholds the possession of said premises, to wit, the northeast quarter of section three, in township thirteen north of range forty-two east, Willamette meridian, in Garfield county, Washington, from plaintiff, to the immediate and exclusive possession of which and the whole thereof plaintiff is entitled.

XXII.

That —— Stone, who was the wife of defendant D. B. Stone, died intestate, in Garfield county, State of Washington, on the — day of ——, 1898 (and no administrator or administratrix has been appointed), leaving as her heirs the defendants herein, who, excepting defendant D. B. Stone, are her children and the only children surviving her and the only children which she has or ever had; that the premises and property herein described, if any right or interest was ever acquired by defendant D. B. Stone, was acquired after his marriage with the said deceased; that some of said children
21 of said deceased are of age and some are minors; that the names of those who are minors are Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone; that the said Ammvillis Allen and Sylvia S. Jenks are married; that said children and defendants other than D. B. Stone have no other rights except as heirs of the said deceased.

That at divers & sundry times pl'ff has demanded possession of & for said premises from defendants, & especially of D. B. Stone.

Wherefore plaintiff prays judgment:

1. That guardian or guardians *ad litem* be appointed for the minor defendants herein.

2. That defendants may be required to set forth the nature of their, his, or her claim, and that all adverse claims of defendants or either of them may be determined by a decree of this court.

3. That defdants be declared trustees for the use and benefit of plaintiff; that by said decree it be declared and adjudged that defendants or either of them have no right, title, interest, or estate whatever in and to the said lands and premises or any part thereof; that the title of said plaintiff be decreed good, valid, and a fee-simple title, and that defendants be required to execute and deliver to plaintiff deed or deeds so as to vest in plaintiff a complete record title in and to said premises; that any and all pretended

claims of defendants or either of them be held for naught and cancelled.

4. That the defendants and each of them be forever enjoined and debarred from asserting any claim whatever in or to said lands or premises or any part thereof adverse to plaintiff; that plaintiff have judgment quieting title against defendants and each of them, and removing the cloud from plaintiff's title created by the pretended claim or claims of defendants or either of them; that plaintiff be adjudged entitled to immediate and exclusive possession of said premises and the whole and every part thereof and be put into possession thereof by order of this court.

22

5. That plaintiff have such other or further relief as to this honorable court shall seem meet and proper and agreeable to equity.

6. That plaintiff have and recover of and from defendants his costs and disbursements herein.

STOLL, STEPHENS, BUNN & MACDONALD.
Attorneys for Plaintiff.

STATE OF WASHINGTON, }
County of Spokane, } ss:

H. M. Stephens, being first duly sworn, upon oath deposes and says that he is one of the attorneys for the above-named plaintiff in the above-entitled action, and makes this verification for and on behalf of said plaintiff, for the reason that said plaintiff is not now within either the county of Spokane or the county of Garfield, State of Washington; that affiant knows the contents of the foregoing amended complaint and the same is true, as he verily believes.

H. M. STEPHENS.

Subscribed and sworn to before me this 5th day of February, 1898.

E. T. WHITE,
Notary Public for the State of Washington,
Residing at Spokane, Washington.

Indorsed: Due service of the within-amended complaint by receipt of a true copy thereof admitted this 7th Feb'y, 1898. Ben. F. Tweedy, att'y for def't. Filed Feb'y 7th, 1898. A. E. Dickson, Co. clerk.

23 In the Superior Court of the State of Washington — & for Garfield County.

J. M. MOORE, Plaintiff,
vs.
D. B. STONE & AMMVILLIS ALLEN, ALMA MAY Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants. } Demurrer.

Comes now the said defendants, by their said attorneys, Gose & Kuykendall and Tweedy & Jewett, and demurs to the plaintiff's complaint on file herein, for the reason that the same does not state facts sufficient to constitute a cause of action.

GOSE & KUYKENDALL AND
TWEEDY & JEWETT,
By G. W. JEWETT,
Defendants' Attorneys.

P. O. address: Pomeroy, Washington.

Filed April 18, '98.
A. E. DICKSON, *Co. Clerk.*

24 In the Superior Court of the State of Washington in & for the County of Garfield.

J. M. MOORE, Pl'tff, } No. 625. Order Appointing Guardian *ad Litem*.
vs.
D. B. STONE ET AL., Def'ts.

On motion of plaintiff, & the court being fully advised in the premises, it appearing that defendants Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone are minors, & have been duly personally served with summons & complaint, and that the residue of the defendants are of and over age, and said minors or either of them not having applied for the appointment of a guardian *ad litem* herein:

It is therefore ordered that M. F. Gose, a member of this bar and a suitable and competent person, be, and he is hereby, appointed guardian *ad litem* herein of said minor defendants & of each of them, to represent & protect the interests of said minors.

Done, in open court, this June 6th, 1898.

THOS. H. BRENTS, *Judge.*

(Indorsed:) Filed June 6, '98. A. E. Dickson, Co. clerk.

25 In the Superior Court of the State of Washington in and for Garfield County.

J. M. MOORE, Pl'tff,
v.
D. B. STONE ET AL., Def'ts. } No. 625. Demurrer of Guardian *ad Litem* of the Minor Defendants.

Comes now M. F. Gose, guardian *ad litem* of & for defendants Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, and demurs to the amended complaint of plaintiff herein, for the reason that said amended complaint does not state facts sufficient to constitute a cause of action against said minor defendants or either of them.

M. F. GOSE,
Guardian ad Litem of Defendants Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone.

26 In the Superior Court of the State of Washington for Garfield County.

J. M. MOORE, Plaintiff,
against
D. B. STONE ET AL., Defendants. } No. 625.

On the — day of June, 1898, the demurrer of the defendants to the amended complaint was argued and submitted for the plaintiff by Ben. F. Tweedy and Mack F. Gose, Esquires, of counsel for the defendants, and by H. M. Stephens and James B. Kerr, Esquires, of counsel for the plaintiff, and was taken under advisement by the court; and now, on this 10th day of August, 1898, the court, being fully advised in the premises, sustains said demurrer, said plaintiff, by his counsel, duly excepting thereto.

THOS. H. BRENTS, *Judge.*

(Indorsed:) Filed Aug. 15, '98. A. E. Dickson, Co. clerk.

27 In the Superior Court of the State of Washington for Garfield County.

J. M. MOORE, Plaintiff,
vs.
D. B. STONE, AMMVILLIS ALLEN, ALMA MAY STONE, EDWIN R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants. } Order.

The demurrer of the defendants to the amended complaint of plaintiff herein came on regularly for hearing and determination on the — day of ——, 1898, and plaintiff and defendants appearing by their respective attorneys, and after argument, and the court being fully advised in the premises, it is—

Ordered that said demurrer be, and the same was, sustained; which order has been heretofore entered by the court; whereupon

plaintiff announces that he desires to stand upon his amended complaint and declined to further plead herein; whereupon the defendants moved the court for an order dismissing the action of plaintiff herein; which motion was granted by the court. Plaintiff excepted to the order and ruling of the court sustaining the demurrer, and also to the order and ruling of the court sustaining the motion of the defendants to dismiss the above-entitled action; which objections were, and they are hereby, allowed by the court.

Wherefore it is ordered and adjudged by the court that the above-entitled action be, and the same is hereby, dismissed at plaintiff's cost, and that defendants do have and recover of and from the plaintiff their costs and disbursements herein, taxed at — dollars: to all of which the plaintiff excepts and exception is allowed.

Done in open court this 18th day of July, 1898.

28 THOS. H. BRENTS, *Judge.*

(Indorsed.) Filed Aug. 27, '98. A. E. Dickson, Co. clerk.

29 In the Superior Court of the State of Washington for Garfield County.

J. M. MOORE, Plaintiff,
v.
D. B. STONE, AMMVILLIS ALLEN, ALMA MAY STONE, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants. } Notice of Appeal.

To the above named defendants, D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, and to M. F. Gose, guardian *ad litem* of defendants Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, and to Messrs. Tweedy & Jewett and Gose & Kuykendall, your attorneys:

You and each of you are hereby notified that the above-named plaintiff does hereby appeal to the supreme court of the State of Washington from that certain order and final judgment rendered and entered herein on the 27th day of August, 1898, which order and final judgment is in favor of defendants and against plaintiff, and which said order and final judgment is one dismissing the action of plaintiff herein and for costs in favor of defendants and against plaintiff, and from the whole and every part of said order and final judgment.

Dated this 27th day of August, 1898.

STEPHENS & BUNN,
Attorneys for Plaintiff.

(Indorsed:) Due service of the within notice by receipt of a true copy thereof admitted this 29th day of August, 1898. Tweedy &

Jewett, att'ys for def't-. Due service of the within notice of appeal admitted and copy rec'd Aug. 29, '98. M. F. Gose, guardian *ad litem* for Orson Emer Stone, Harland Clifford Stone, and Orley Otis Stone. Filed Aug. 29, '98. A. E. Dickson, Co. clerk.

30 In the Superior Court of the State of Washington for Garfield County.

J. M. MOORE, Plaintiff,
v.
D. B. STONE, AMMVILLIS ALLEN, ALMA MAY Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants. } Bond on Appeal.

Know all men by these presents that the undersigned, for and on behalf of the above-named plaintiff, does hereby bind himself, his heirs, executors, and administrators, unto the above-named defendants in the sum of two hundred dollars ($200.00).

The condition of the above obligation is such that whereas the above-named plaintiff has appealed to the supreme court of the State of Washington from that certain order and final judgment made and entered in the above-entitled action on the 27th day of August, 1898, which said order and final judgment is in favor of defendants and against said plaintiff:

Now, therefore, if the said plaintiff (appellant) shall and will pay all costs and damages that may be awarded against him on the said appeal or on the dismissal thereof, not exceeding two hundred dollars, then and in that event this obligation to become null and void; otherwise to be and remain in full force and effect.

Dated this 29th day of August, 1898.

F. H. MASON.

(Indorsed:) Filed Sept. 1, '98. A. E. Dickson, Co. clerk.

31 STATE OF WASHINGTON, }
County of Spokane, } ss:

F. H. Mason, being first duly sworn, upon oath deposes and says that he is the party who made and executed the above and foregoing bond for and on behalf of the above-named plaintiff and for the purpose of effecting and perfecting an appeal in the above-entitled action; that he is a resident of the county of Spokane, State of Washington, and is worth the sum of two hundred dollars over and above all debts and liabilities, in separate property within the State of Washington, exclusive of property exempt from execution.

F. H. MASON.

Subscribed and sworn to before me this 29th day of August, 1898.
[Seal of Notary Public.]

E. T. WHITE,
Notary Public in and for said County and State,
Residing at Spokane, Washington.

(Indorsed:) Filed Sept. 1, '98. A. E. Dickson, Co. clerk.

32 In the Superior Court of the State of Washington for Garfield Co.

J. M. MOORE, Plaintiff,
vs.
D. B. STONE, AMMVILLIS ALLEN, ALMA MAY Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants. } Substitution of Att'ys.

We hereby consent to the substitution of Stephens & Bunn as attorneys for the plaintiff in the above-entitled action in our place and stead, and hereby withdraw our appearance herein.

Dated at Spokane, Washington, this 27th day of August, 1898.

STOLL, STEPHENS, BUNN & MACDONALD,
Attorneys for Plaintiff.

To the above-named defendants, D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, and to M. F. Gose, guardian *ad litem* of defendants Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, and to Messrs. Tweedy & Jewett and Gose & Kuykendall, your attorneys:

You will please take notice that Stephens & Bunn, the undersigned, have been substituted as attorneys for the plaintiff in the above-entitled cause in place of Messrs. Stoll, Stephens, Bunn & Macdonald, their consent being above set forth.

STEPHENS & BUNN,
Attorneys for Plaintiff.

33 STATE OF WASHINGTON, } ss:
County of Spokane, }

E. T. White, being first duly sworn, upon oath deposes and says that he is over the age of twenty-one years; that Messrs. Stephens & Bunn, attorneys for the plaintiff in the above-entitled action, have their offices in the city of Spokane, State of Washington; that Messrs. Tweedy & Jewett are attorneys for the above-named defendant and have their offices in the city of Pomeroy, Washington; that Mr. M. F. Gose is the guardian *ad litem* of defendants Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, minors, and has his office and resides in the said city of Pomeroy, Washington; that on this 27th day of August, 1898, affiant deposited in the United States post-office at the said city of Spokane, Washington, a full, true, and correct copy of the above and foregoing substitution of attorneys, enclosed in a sealed envelope, postage prepaid, and addressed to said Messrs. Tweedy & Jewett, attorneys-at-law, at Pomeroy, Washington, and also a full, true, and correct copy of said substitution of attorneys, enclosed in a sealed envelope, postage prepaid, and addressed to said M. F. Gose, at said Pomeroy, Washington; that there is a daily mail service between the said city

of Spokane, Washington, and the said city of Pomeroy, Washington.

E. T. WHITE.

Subscribed and sworn to before me this 27th day of August, 1898.

H. M. STEPHENS.
Notary Public for the State of Washington, Residing at Spokane, Washington.

34 J. M. MOORE, Plaintiff, *vs.* D. B. STONE ET AL., Defendants.

STATE OF WASHINGTON, *County of Garfield,* } *ss:*

I, A. E. Dickson, county clerk and clerk of the superior court in and for Garfield county, the State of Washington, do hereby certify that the foregoing and annexed are true, full, and correct copies of the amended complaint, demurrer, order appointing guardian *ad litem*, demurrer of guardian *ad litem* of the minor defendants, order on demurrer, order of dismissal, notice of appeal and bond on appeal, and substitute of att'ys, as the same now appear of record in the files of said court in foregoing entitled action, now in my care, custody, and keeping.

In witness whereof I have hereunto set my hand and affixed the seal — said court this 10th day of September, 1898.

A. E. DICKSON,
[SEAL.] *County Clerk and Clerk of the Superior Court in and for said County and State.*

(Indorsed:) Filed Oct. 7, 1898. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

35 J. M. MOORE, Appellant, *vs.* D. B. STONE ET AL., Respondents. No. 3124.

Filed Dec. 5th, 1898.

Per Curiam:

This case falls within the rule announced by this court in Moore *vs.* Cormode and is accordingly affirmed.

36 In the Supreme Court, State of Washington.

SATURDAY, *January 14th*, 1899.

J. M. MOORE, Appellant, *vs.* D. B. STONE ET AL., Respondents. No. 3124. Judgment.

This cause having been heretofore submitted to the court upon the transcript of the record of the superior court of Garfield county and

upon the argument of counsel, and the court having fully considered the same and being fully advised in the premises and having filed its opinion, in writing, it is now, on this 14th day of January, A. D. 1899, on motion of M. F. Gose, Esquire, of counsel of respondent, considered, adjudged, and decreed that the judgment of the said superior court be, and the same is hereby, affirmed with costs, and that the said D. B. Stone *et al.* have and recover of and from the said J. M. Moore and from F. H. Mason, surety, the costs of this action, taxed and allowed at twenty-five dollars, and that execution issue therefor; and it is further ordered that this cause be remitted to the said superior court for further proceeding in accordance with this opinion.

37 STATE OF WASHINGTON:

In the Supreme Court.

J. M. MOORE, Plaintiff in Error,
vs.
D. B. STONE, AMMVILLIS ALLEN, ALMA MAY STONE, EDWIN R. STONE, LUCY MYRTLE STONE, SYLVIA S. JENKS, WARREN L. STONE, ORSON EMER STONE, HARLAND CLIFFORD STONE, ORLIE OTIS STONE, and M. F. GOSE, as Guardian *ad Litem* for the Above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants in Error.

Now comes the above-named J. M. Moore, plaintiff in error, and prays that a writ of error in the above-entitled cause may issue to the said supreme court of the State of Washington to review a certain judgment entered in said court on the 14th day of January, 1899, in favor of said D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, defendants in error, and against the said J. M. Moore, plaintiff in error, and dismissing the complaint of the plaintiff in error, J. M. Moore, for the reason that manifest error hath intervened in the rendition of said judgment of said supreme court of Washington, to the great damage of said plaintiff in error; all of which will more in detail appear from the assignment of errors which is filed with this petition.

J. M. MOORE,
Plaintiff in Error,
By C. W. BUNN,
JAMES B. KERR,
H. M. STEPHENS,
His Attorneys.

Dated February 23rd, 1899.

(Indorsed:) Filed Mar. 2, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

38 STATE OF WASHINGTON:

In the Supreme Court.

J. M. MOORE, Plaintiff in Error,

vs.

D. B. STONE, AMMVILLIS ALLEN, ALMA MAY STONE, EDWIN R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as Guardian *ad Litem* for the Above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants in Error.

Now comes the above-named plaintiff in error, J. M. Moore, by C. W. Bunn, H. M. Stephens, and James B. Kerr, his attorneys, and assigns the following errors in the judgment of this court herein:

I.

The court erred in its judgment that the complaint of the plaintiff in error be dismissed.

II.

The court erred in its judgment sustaining the demurrers of the defendants in error to the complaint of the plaintiff in error herein.

III.

The court erred in its judgment wherein and whereby it decided that the plaintiff in error was not the owner of the land in controversy and was not entitled to recover possession thereof.

IV.

The court erred in its judgment wherein and whereby it decided that the plaintiff in error was not entitled to judgment canceling the patent issued to the defendant in error D. B. Stone and adjudging plaintiff in error to be the owner of the premises in con-
39 troversy.

V.

The court erred in its judgment wherein and whereby it decided that the patent issued to the defendant in error D. B. Stone conveyed to him the legal and equitable title to the premises in controversy.

VI.

The court erred in failing to hold and decide that the plaintiff in error was the owner and entitled to the possession of the premises in controversy under and by virtue of the conveyance to said plaintiff in error from the Northern Pacific Railroad Company.

VII.

The court erred in failing to hold and decide that the Northern Pacific Railroad Company became the owner of the premises in

controversy by virtue of the act of Congress approved July 2, 1864, granting lands to aid in the construction of the Northern Pacific railroad.

VIII.

The court erred in failing to hold that the Northern Pacific Railroad Company became the owner of the premises in controversy by virtue of its selection thereof under said act of Congress of July 2, 1864.

IX.

The court erred in failing to hold and decide that the premises in controversy were public land of the United States, free from pre-emption or other claims or rights, and subject to the grant to said Northern Pacific Railroad Company under said act of Congress of July 2, 1864, at the date of selection, to wit, December 12th, 1883.

X.

The court erred in failing to hold that the selection of the premises in controversy by the Northern Pacific Railroad Company on December 12th, 1883, was in compliance with said act of July 2, 1864, and the directions of the Secretary of the Interior, and operated to appropriate said premises to said Northern Pacific Railroad Company under said grant.

XI.

The court erred in holding and deciding that the occupancy of the premises in controversy by the defendant in error D. B. Stone on the date of the selection thereof by the Northern Pacific Railroad Company constituted such a claim thereto as prevented the attachment of the grant to said Northern Pacific Railroad Company upon selection.

XII.

The court erred in failing to hold and decide that the premises in controversy were appropriated to and passed to the Northern Pacific Railroad Company upon the definite location of its road under said act of July 2, 1864, for the reason that all of the lands in the indemnity limits were insufficient to satisfy the losses from the place limits of its said grant.

XIII.

The court erred in failing to hold and decide that the premises in controversy were withdrawn from sale, homestead, and pre-emption entry by virtue of the provisions of said act of July 2, 1864, from and after February 21, 1872, when the general route of said Northern Pacific railroad was fixed.

XIV.

The court erred in failing to hold and decide that the premises in controversy were withdrawn from sale, homestead, and pre-emption entry by virtue of the provisions of said act of July 2, 1864 from

and after October 4, 1880, when the line of said Northern Pacific railroad was definitely located.

XV.

The court erred in failing to hold and decide that the
41 premises in controversy were withdrawn from sale, homestead, and pre-emption entry from and after November 13, 1880, by virtue of the withdrawal thereof by the Commissioner of the General Land Office.

XVI.

The court erred in failing to hold and decide that the Land Department of the United States committed an error or law in awarding the premises in controversy to the defendant in error, D. B. Stone, and allowing his homestead entry thereof, and in cancelling the selection of the Northern Pacific Railroad Company.

XVII.

The court erred in holding that the patent issued to the defendant in error D. B. Stone concluded and determined the rights of the parties herein.

J. M. MOORE,
By C. W. BUNN,
JAMES B. KERR,
H. M. STEPHENS,
His Attorneys.

Dated Feb'y 23rd, 1899.

(Indorsed:) Filed Mar. 2, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

42 Know all men by these presents that we, Howell W. Peel and E. L. Rutter, of the city of Spokane, county of Spokane, State of Washington, are firmly bound unto D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, of the county of Garfield, in the State of Washington, in the full and just sum of two hundred and fifty (250) dollars, to be paid to the said D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, their heirs, representatives, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 24th day of February, in the year of our Lord one thousand eight hundred and ninety-nine.

Whereas lately, in the supreme court of the State of Washington, in a suit pending in said court between J. M. Moore, plaintiff, and D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, defendants, judgment was rendered against said plaintiff, J. M. Moore, and the said plaintiff having obtained a writ of error and filed a copy thereof in the office of the clerk of said court to reverse the judgment in the aforesaid cause, and the citation directed to the said D. B.
43 Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, defendants, citing and admonishing them and each of them to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, on or before the first day of May, 1899:

Now, the condition of the above obligation is such that if the said J. M. Moore shall prosecute said writ of error to effect and answer all damages and costs if he shall fail to make his plea good, then the above obligation is void; otherwise to remain in full force and virtue.

HOWELL W. PEEL. [SEAL.]
R. L. RUTTER. [SEAL.]

Sealed and delivered in the presence of—
E. T. WHITE.
H. M. STEPHENS.

STATE OF WASHINGTON, } ss:
County of Spokane, }

Howell L. Peel and R. L. Rutter, being first duly sworn, each for himself, and not one for the other, deposes and says:

That he is one of the parties who made and executed the above and foregoing bond for and on behalf of J. M. Moore, plaintiff in error in the cause mentioned therein, and for the purpose of effecting and perfecting a writ of error therein; that he is a resident of the county of Spokane, State of Washington, and is worth the sum of two hundred and fifty (250) dollars over and above all debts and liabilities, in separate property within the State of Wash-
44 ington, exclusive of property exempt from execution.

HOWELL W. PEEL.
R. L. RUTTER.

Subscribed and sworn to before me this 24th day of February, A. D. 1899.

E. T. WHITE,
Notary Public in and for the State of Washington,
Residing at Spokane, Washington.

[SEAL.]

4—284.

The foregoing bond is approved as to form and sufficiency.

MERRITT J. GORDON,
Chief Justice of the Supreme Court of Washington.

(Indorsed:) Filed Mar. 2, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy.

45 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable supreme court of the State of Washington, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Washington, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had, in a suit between J. M. Moore, plaintiff, and D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, defendants, wherein was drawn in question the validity of a statute or an authority exercised under the United States and the decision was against its validity, a manifest error hath intervened, to the great damage of the said J. M. Moore, as by his complaint appears, we, being willing that error, if any hath been, shall be duly corrected and full and speedy justice done to the parties in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you may have the same at the city of Washington, in the District of Columbia, within sixty days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the said Supreme Court, this 2nd day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

[Seal United States Circuit Court, District of Washington.]

A. REEVES AYRES,
Clerk of the Circuit Court of the United States for the District of Washington.

46 The above writ is hereby allowed.

MERRITT J. GORDON,
Chief Justice of the Supreme Court of Washington.

47 [Endorsed:] 3124. State of Washington. In supreme court. J. M. Moore, pl'ff in error, *vs.* D. B. Stone and others, defend-

ants in error. Writ of error. Filed Mar. 3, 1899. C. S. Reinhart, clerk, by R. B. Crandall, deputy. C. W. Bunn, James B. Kerr, H. M. Stephens, attorneys for pl'ff in error.

48 United States of America to D. B. Stone, Ammvillis Allen, Alma May Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Greeting:

You and each of you are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, in the District of Columbia, within sixty days from the date hereof, pursuant to a writ of error filed in the office of the clerk of the supreme court of the State of Washington, wherein J. M. Moore is plaintiff in error and you and each of you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in said writ mentioned, should not be corrected and speedy justice should not be done in that behalf.

Witness the Honorable Merritt J. Gordon, chief justice of the supreme court of the State of Washington, this second day of March, in the year of our Lord one thousand eight hundred and ninety-nine.

MERRITT J. GORDON,
Chief Justice of the Supreme Court of Washington.

49 STATE OF WASHINGTON, } ss:
County of Garfield, }

S. S. Russell, being first duly sworn, upon oath deposes and says:

That he is the duly elected, qualified, and acting sheriff of Garfield county, State of Washington.

That he served the within citation upon the within-named defendants, D. B. Stone, Alma May Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, Orlie Otis Stone, and M. F. Gose, as guardian *ad litem* for the above-named Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, by delivering to & leaving with them and each of them, personally, a true copy of said citation, certified by affiant to be such true copy.

Affiant further certifies that he served the said citation upon the attorneys for the above-named defendants by delivering to and leaving with Messrs. Gose & Kuykendall a true copy of said citation, certified by affiant to be such.

Affiant further certifies that said service was made on all and each of said defendants and on said attorneys on the 9th day of March, A. D. 1899, within the county of Garfield, State of Washington, and that said parties are the defendants mentioned in said citation.

S. S. RUSSELL.

Subscribed and sworn to before me this 10th day of March, A. D. 1899.

{Seal of Ben. F. Tweedy, Notary Public, State of Washington. Commission expires Sept. 6, 1901.}

BEN. F. TWEEDY,
Notary Public in and for the State of Washington, Residing at Pomeroy, said State.

50 STATE OF WASHINGTON, } ss:
County of Spokane, }

John Culton, being first duly sworn, upon oath deposes and says that he is a citizen and resident of Whitman county, State of Washington, over the age of twenty-one years, competent to be a witness in the action mentioned in the foregoing citation, and a disinterested party; that he served said citation on the within-named Ammvillis Allen, in the county of Whitman, State of Washington, by delivering to and leaving with her, personally, a true copy of said citation, certified by affiant to be such true copy; which said service was so made upon said Ammvillis Allen upon the 16th day of March, A. D. 1899; that said Ammvillis Allen is one of the parties mentioned in the said citation, to whom said citation is directed.

JOHN CULTON.

Subscribed and sworn to before me this 16th day of March, A. D. 1899.

{Seal of G. W. Peddycord, Notary Public, State of Washington. Commission expires Feb. 10, 1900.}

G. W. PEDDYCORD,
Notary Public in and for the State of Washington, Residing at Palouse City, Whitman County, Washington.

51 [Endorsed:] 3124. State of Washington. In supreme court. J. M. Moore, pl'ff in error, *vs.* D. B. Stone and others, defendants in error. Citation. Filed Mar. 20, 1899. C. S. Reinhart, clerk. C. W. Bunn, James B. Kerr, H. M. Stephens, att'ys for pl'ff in error.

52 In the Supreme Court, State of Washington.

J. M. MOORE, Plaintiff,
v.
D. B. STONE, AMMVILLIS ALLEN, ALMA MAY Stone, Edwin R. Stone, Lucy Myrtle Stone, Sylvia S. Jenks, Warren L. Stone, Orson Emer Stone, Harland Clifford Stone, and Orlie Otis Stone, Defendants.

Certificate, Clerk of Supreme Court.

I, C. S. Reinhart, clerk of the supreme court of the State of Washington, hereby certify that the above and foregoing is a full,

true, and correct transcript of the record in the above-entitled cause, and that in pursuance of the writ of error filed herein I now transmit the same, together with the original writ of error, the original citation, and a copy of the bond on appeal and of the assignment of errors, to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court this 14th day of April, 1899.

[Seal of the Supreme Court, State of Washington.]

C. S. REINHART, *Clerk.*

[Ten-cent U. S. internal-revenue stamp.]

Endorsed on cover: File No., 17,394. Washington supreme court. Term No., 284. J. M. Moore, plaintiff in error, *vs.* D. B. Stone, Ammvillis Allen, Alma May Stone, *et al.* Filed May 4, 1899.